



11 OCT 2006

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SAN DIEGO CA 92130-2040

In re Application of	:	NOTIFICATION
BURNS et al.	:	
Application No.: 10/538,499	:	
PCT No.: PCT/AU2003/001661	:	
Int. Filing Date: 11 December 2003	:	
Priority Date: 11 December 2002	:	
Attorney Docket No.: 529282001700	:	
For: PYRAZINE-BASED TUBULIN	:	
INHIBITORS	:	

This application is before the Office of PCT Legal Administration for consideration of matter arising under 35 U.S.C. 371.

#### **BACKGROUND**

On 11 December 2003, applicant filed international application PCT/AU2003/001661, which designated the United States and claimed a priority date of 11 December 2002. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 24 June 2004. The thirty-month period for paying the basic national fee in the United States expired at midnight on 13 June 2005 (11 June 2005 being a Saturday).

On 09 June 2005, applicants filed a transmittal letter for entry in to the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 10 February 2006, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) and the surcharge under 37 CFR 1.492(h) were required.

On 03 August 2006, applicants filed a submission including a declaration of inventors and the surcharge under 37 CFR 1.492(h).

### **DISCUSSION**

37 CFR 1.41(a)(4) states:

The inventorship of an international application entering the national stage under 35 U.S.C. 371 is that inventorship set forth in the international application, which includes any change effected under PCT Rule 92bis. See § 1.497(d) and (f) for filing an oath or declaration naming an inventive entity different from the inventive entity named in the international application, or if a change to the inventive entity has been effected under PCT Rule 92bis subsequent to the execution of any declaration filed under PCT Rule 4.17(iv) (§ 1.48(f)(1) does not apply to an international application entering the national stage under 35 U.S.C. 371).

The declaration filed 03 August 2006 does not list the inventorship set forth in the international application. The declaration lists five inventors while the international application lists two inventors. However, a Form PCT/IB/306 does not appear in the file for any of the additional three inventors. Nor is there any other indication that a PCT Rule 92<sup>bis</sup> change has been made in the above-identified international application. Accordingly, the inventorship in the national stage is the inventorship set forth in the international application and the declaration filed 03 August 2006 is not sufficient.

### **CONCLUSION**

Applicants are required to file a declaration of inventors in compliance with 37 CFR 1.497(a)-(b) within a time limit of ONE MONTH from the date of this decision or within the time remaining in the response set forth in the NOTIFICATION mailed 10 February 2006, whichever is longer. No extension of this time limit may be granted under 37 CFR 1.136, but the period for response set in the NOTIFICATION mailed 10 February 2006 may be extended under 37 CFR 1.136(a).

The declaration must name the inventive entity named in the international application, or a proper change of inventorship under 37 CFR 1.497(d) must be filed, or Forms PCT/IB/306 indicating changes effected under PCT Rule 92<sup>bis</sup> corresponding to the declaration filed 03 August 2006 must be filed.

Failure to timely file a proper reply will result in abandonment of the application.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



Daniel Stemmer

PCT Legal Examiner

PCT Legal Affairs

Office of Patent Cooperation Treaty

Application No.: 10/538,499

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